



Lamoine Board of Selectmen

606 Douglas Hwy
Lamoine, ME 04605
(207) 667-2242
town@lamoine-me.gov

Minutes of January 23, 2014

Chair Jo Cooper called the meeting to order at 7:00 PM

Present were: Selectmen Bernie Johnson, Gary McFarland, S. Josephine Cooper, Cynthia Donaldson, Nathan Mason; Administrative Assistant Stu Marckoon, Selectman candidates Robert Christie, Heather Fowler, Planning Board members John Holt, James Gallagher, Gordon Donaldson, Chris Tadema-Wielandt, School Committee member Brett Jones, Code Enforcement Officer Michael Jordan, Assessor Jane Fowler, Conservation Commission member Carol Korty, Kathy Gaianguest, Paul MacQuinn, Jay Fowler, Stephen Salsbury, Ed Bearor, Richard McMullen, Elizabeth McMillen, Kathy Massimini, Steve Callahan, John Jerabek, Cheryl Curtis, Eric Hartman, David & Diane Sanderson, Lolly Lovett, and Valerie Sprague.

Agenda Review – Stu suggested the first two items on the addendum may be discussed more appropriately under the gravel discussion on the regular agenda.

Minutes – January 9, 2014 – Cynthia had questions about wording regarding the proposed gravel task force, and no change was made. There was one minor typographical error. Jo moved to approve the minutes with the minor change. Gary 2nd. **Vote in favor was 5-0.**

Expenditure warrant 13 – Selectmen signed the warrant in the amount of \$43,964.43. Stu noted many of the items on the warrant were tax refund checks to those receiving veterans' exemptions who had paid their property taxes in full.

Cash & Budget Report – There were no questions regarding the bi-weekly report.

Property Tax Reminders – Selectmen had no objection to sending out reminder postcards to folks who have a tax balance remaining in February. Stu estimated the cost to be \$250-to-\$300 for postage.

Veterans Refunds from Hancock County – Stu reported that the checks will go out tomorrow and receipts for those who did not yet pay in full have been generated and mailed to each person receiving a veteran's exemption.

Foreclosed Property – Stu reported that the former owner of the property on Needles Eye Road has been in contact and will be sending a check so that a quitclaim deed can be issued next meeting. He said the owner of the property on Douglas Highway has received the certified letter from the Board of Selectmen, but there has been no contact as of yet. He said he has contacted the town attorney regarding that property, and has contacted Maine Municipal Association Risk Pool to start the process of insuring the buildings as required.

Gravel – Task Force Process – Jo said the Selectmen discussed the process of forming a task force to deal with the gravel ordinance and concerns surrounding it at the previous meeting. She said the board received a letter of concern questioning whether the task force should even exist. She said there is no back room agenda, and that many mistakenly believe the task force is being formed in reaction to the lawsuit. She said the process would make discussion about gravel a more open process.

Gary said that Stu wrote up a guideline the Selectmen could go over, and copies could be distributed. He briefly outlined the guidelines. Jo said that was a result of questions from the last meeting about how to proceed, how to form a committee, and what the goals might be. She said the first question was whether to form a task force. She referred to a letter received from several residents earlier in the week. Kathy Gaianquest asked that the letter be placed in the minutes. (the letter appears at the end of these minutes) Jo said if people want a copy of the letter, they can access it. She said the goal of the task force is to come to a solution that is good for the town as a whole. She read from the letter, noting that it contains concerns that the process is flawed, the composition is poorly considered, and the motivation misplaced.

Jo said Stu drafted the process based on a discussion at the previous Selectmen's meeting. Bernie said everything the task force does would be open and on the Cable TV channel, and people are seeing tonight how open the process would be.

Jo said the Selectmen are in a peculiar position. She said they wish to respect the Planning Board's process and noted the Planning Board has written to the Selectmen with suggestions. She said attorneys are talking to one another. She said a point that was made in the letter from the citizens was that the task force should not be working on the ordinance, but on the whole issue around gravel. She said the lawsuit made things difficult. She said the letter says the Selectmen want to avoid the lawsuit but that is not the case. She said it would cost many thousands of dollars to defend the lawsuit and it's reasonable to not do that if other methods are possible. She said she understands the belief that the Selectmen are caving in to the gravel owners. She said the Selectmen are trying to find some middle ground.

Bernie said the initial discussion had the task force being composed of the Planning Board and the Selectmen, and that has changed. Nathan said he prefers the name work group over task force. He said the intent is not to write ordinances, but to sit down and possibly find a compromise. He said all parties can voice their opinions. Jo said the attempt is to involve as many voices as possible, and figured the Selectmen must be doing a good job if everyone is mad at them. She said everyone involved seems to have the best interest of the town at heart.

Carol Korty asked to see a copy of the draft process document (also pasted at the end of the minutes). Jo said that was fine. She said task force meetings would be open to the public and they would make the draft available. She said the goal is to be as open as we can. Gary reminded folks the document is merely a draft. Bernie said it was his understanding it was not complete. Cynthia said it doesn't really matter what the group is called – the word task force came about because the group has a job to come to some

sort of consensus. She said there was no majority or minority report contemplated, just the notion to work this out.

Jay Fowler said he thinks the task force idea is loaded one way. He said the group would need to get knowledge because the members don't have the same knowledge as pit operators. He said there is a lot of misunderstanding, and if the two sides get together, they will learn something from it. Jo said the group would be focused on the gravel ordinance. She said at last year's town meeting there were immediate concerns about the ordinance, and then a lawsuit followed. She said the Planning Board has been working on some amendments, and that's where things stand.

Carol Korty said folks do need to talk with each other. She said there is a larger issue of a Comprehensive Plan and how the town will develop over the next 25-years. Bernie said that is the task of a Comprehensive Planning team. Jo said if the town meeting approves a Comprehensive Plan, all sides will be listened to.

Ed Bearor told the Selectmen that the lawsuit was dismissed this week without prejudice. Jo said that simplifies things. The Selectmen then copied off the draft of the task force process and handed it out to the audience.

Jim Gallagher asked under what condition the lawsuit was dismissed. Mr. Bearor said the only condition to do that was to form the task force. He said the gravel pit operators could re-file in the future. Jo said that was not what motivated the Selectmen to consider forming the task force. She said there was no point in spending thousands of dollars on attorney fees if it didn't have to be done. She said there were a number of alternative proposals offered, but they were not acceptable. She said the task force grew out of the frustration that things were not getting anywhere. Mr. Gallagher asked if this means there is pressure to develop ordinance. Jo said the task force would make recommendations to the Board of Selectmen. Ms. Gaianguet asked if part of the dismissal was contingent on persons from the gravel industry serving on the task force. Cynthia said there were no expectations of the task force makeup that led to the dismissal. Bernie echoed that. Ms. Gaianguet said she believes in conflict management and embraces the idea, and feels there needs to be a dialogue within the town. She said disagrees with having large gravel companies who are not town citizens sitting on the task force potentially making ordinances. She said she was not sure if the conflicts can be resolved.

John Holt said he was glad the suit was dismissed. He said he thought the purpose of the suit was to test whether the provisions of the gravel ordinance were illegal. He said it would be nice to clarify what problems brought about the task force idea and asked where the documentation is that there is a problem. Brett Jones said the town meeting last March identified some concerns right after the ordinance passed. He said the Planning Board said they would get back to the town meeting with changes. Jo said the lawsuit soon followed.

Ms. Korty asked about why information from the town attorney to the Selectmen is not public. Stu explained that the town attorney communication to his client, in this case the

Board of Selectmen, is privileged and that until the Selectmen receive such information and decide as a board whether to share that, it remains between the attorney and the board. There was a brief discussion about attorney/client privilege.

David Sanderson said he was concerned that this matter is bouncing all over the place. He asked what problem the Select Board is trying to address and noted that the Planning Board has done its job, but the Selectmen have not dealt with the proposed amendments. Jo said the lawsuit has tied their hands. Bernie said there were four sticking points identified and the amendments from the Planning Board dealt with one of them. He said he thought there might be more to come. Jo said the Selectmen need to go forward.

John Jerabek asked about an internet posting asking for public members. Jo said that was correct and several names were offered. There was a brief discussion about the criteria for selection and personal bias.

Bob Christie asked if the list was open for names. Jo said the Selectmen will have to make some decisions about what they want to accomplish with the task force. Michael Jordan said there should be some professional representation and suggested that Robert Gerber be asked to sit on the task force. Jo said his name was suggested to be hired with the pit operators paying for half of his cost. Valerie Sprague said that at one point the setback lines were proposed to be 300-feet away from property lines. She asked if residents will be looked at for the task force. Jo said that was the hope of the Selectmen.

Jo read a letter from the Lamoine Planning Board (attached at the end of the minutes as well). She said it was not the intention of the Board of Selectmen to ignore the amendment submissions. She said she apologized if the Planning Board felt ignored. She said it's the intention to put those amendments before the town meeting.

Stu said the town attorney had mentioned that he was concerned by the language in the Appeals process section, but nothing has happened since receiving that concern. There was a brief discussion whether that language was sent to the Planning Board – Stu said he would make sure to send it out whether or not it had been sent to begin with.

Gordon Donaldson said the amendments were adopted by the Planning Board on September 27, 2013 and there needs to be a talk about the mechanics of the process. A brief discussion followed. There was a discussion about putting the amendments into the town meeting warrant.

The discussion turned back to the matter of the task force. Jo asked to decide whether to have one. Nathan said it would be a reference tool for the Selectmen and not a group for writing an ordinance. He said the Selectmen would have the final say over what went to town meeting. Gary said there needs to be fair representation for all areas.

Jo moved to have a task force to look at the Gravel Ordinance and make any potential change recommendations to the Board of Selectmen. Gary 2nd. **Vote in favor was 5-0.**

Mr. Sanderson said he objected to having non-citizens serve on the task force. He said he thinks that it is just awful to have opponents of the town law serving. Jo said she was not quite sure she agreed with that. Heather Fowler asked if it was the intention to exclude experts from the panel. Ms Gaianguest said it would be her recommendation that the task force be made up of Lamoine citizens and invite outsiders to the group. She asked if the balance of the group can be balanced with the interests of the town. Jo said the goal of the task force has to be to accomplish something. Nathan said anything would come before the elected municipal officers and the town would have the final say.

Jay Fowler said he believed the town is in the situation it is because the Planning Board is loaded one way. A brief discussion followed. Bob Christie said he supported Mr. Fowler and there is no reason not to listen to all points of view. Jo said the Selectmen's responsibility is to bring the matter before the town. Mrs. Sprague said the Planning Board put a lot of time into what they came up with, and this undermines their work. Bernie said the town meeting vote last year was very close, and gives him the feeling that some changes are needed.

Jo read the list of potential task force members identified prior to the meeting. The names of Bob Christie and Valerie Sprague were added to that list. Gary said Jo would be the chair, and suggested that Nathan serve as well. Nathan said he was OK with that. Mr. Gallagher cautioned to be careful of having too many on the committee. A long discussion followed regarding the committee's membership. The following were appointed:

- **Stephen Salisbury** – a motion from Gary, 2nd by Nathan and a 5-0 vote in favor
- **Donald Bamman** - a motion from Jo and 2nd from Gary and a 5-0 vote in favor
- **Perry Fowler** – a motion from Jo and 2nd from Bernie and a 5-0 vote in favor
- **David Legere** – a motion from Jo and 2nd from Cynthia and a 5-0 vote in favor
- **Michael Jordan** – a motion from Bernie and 2nd from Jo and a 5-0 vote in favor
- **Jay Fowler** – a motion from Gary and 2nd from Jo and a 4-0 vote in favor (Donaldson abstained) There was a brief discussion prior to the vote regarding having both Perry Fowler and his father on the same board.
- **Jo Cooper** – on a motion from Cynthia and 2nd from Gary and a 4-0 vote in favor (Cooper abstaining)
- **Valerie Sprague** – on a motion from Cynthia and 2nd from Jo and a 5-0 vote in favor.
- **Richard McMullen** – on a motion from Gary and 2nd from Nathan and a 5-0 vote in favor.

The Selectmen indicated the task force would meet jointly with the Selectmen at their next regular meeting to discuss the goals and process.

Citizen Petition – Stu outlined a communication from the town attorney regarding the citizen's petition asking for an amendment to the Building and Land Use Ordinance to be placed before voters. Gary reported he spoke with attorney Tony Beardsley today and said he did not recommend one way or the other regarding placement on the warrant.

He read the letter from the town attorney (also attached at the end of the minutes). Gary said the petitioned question could possibly lead to another lawsuit. He said it was not illegal and people could vote on it. Jo said there was concern over an enforcement issue with the way the petition was worded. Stu explained that the petition sought to amend a table in Section 1 of the Building and Land Use Ordinance. He said there is no table in that Section, which is the Scope section. He said he suspects that the petitioners sought to amend Table H in Section 7 of the ordinance, but that was not what the petition said. There was a discussion about what the intent of the ordinance was and whether the Selectmen could correct a clerical error. Ms. Korty said if the Selectmen cannot correct the clerical error on the petition, they would like to have the matter voted on at the March town meeting. Brett Jones noted that the school budget would not be ready for the March town meeting, so there would have to be a special town meeting for that. Stu said he might recommend that there be a special town meeting just to deal with gravel matters. Ms. Korty asked the Selectmen if she could see the letter from the town attorney. There was no objection to that. She said she would like to prepare a corrected petition.

Stu said he would suggest that the Selectmen have reasonable grounds to reject the petition and given that Ms. Korty would likely work to resubmit a corrected petition, that it might be prudent to reject the petition. Jo moved to reject the petition, Gary 2nd. Cynthia asked if this meant there would be a special town meeting instead. Stu said that it just means that the petitioned question would not appear on the March 2014 regular town meeting warrant. **Vote in favor was 5-0.**

Cynthia asked if the Task Force process document was still a draft. The answer was that it is.

Expired Permit Status – Stu reported that all the permits that had received a notice of violation had received conditional permits from the Planning Board.

Letter from the Cahn Family – Stu reported that the Selectmen had received a letter from Frederick Cahn regarding a Planning Board site visit that took place last Friday containing concerns about a person who attended the visit. Carol Korty said it was she who apparently caused the concern. She said the reason she attended the site visit was that she lives across the cove from the property. She said she asked Mr. Cahn's engineer if it was OK to walk down to the shore. A brief discussion about the actions followed.

Dr. Donaldson said he was there with the Planning Board and could confirm that the engineer, Andrew McCullough did say yes to Ms. Korty's request. Jo asked what Mr. Cahn was requesting. Gary said a satisfactory explanation. Nathan read the letter. Jo said Mr. Cahn has the right to make a complaint and take this further. She said the Selectmen were not present. Bernie asked whether site visits are public meetings. Stu said they are. Bernie asked what role the chair of the board conducting the site visit might have. Jane Fowler said it was pretty disturbing to the Cahns to have someone wandering around their property. Ms. Korty apologized.

Town Meeting Warrant – Stu said the town meeting warrant for March 11 and 12 is not ready to sign. He said he needed some information on what the Selectmen wished to have included on the warrant, namely which ordinance changes to include. The Selectmen said the three proposed Gravel Ordinance amendments from the Planning Board and in consultation with Planning Board Secretary Gordon Donaldson the changes to the Building and Land Use Ordinance regarding MUBEC.

The meeting recessed between 9:05 PM and 9:12 PM to give folks a chance to leave and stretch.

2014/15 Budget Proposal – Stu said the budget approved by the Budget Committee was in the Selectmen's packets. He noted the Budget Committee has recommended that the heating system at the town hall be replaced in that fiscal year instead of starting a sinking fund, and that the sinking fund proposed for SCBA bottles for the fire department be delayed for now. He noted the heating system would be paid for by the Hodgkins Fund.

Citizen of the Year – Stu asked the Board to send him suggestions.

Town Report – Stu reported the town report is nearly complete – the only things left are the town meeting warrant and the RSU 24 superintendent's report. He asked the board to look over the latest draft for corrections.

School Committee – Stu reported he put a report from consultant Judith Lucarelli in the packet. Brett Jones recapped the first meeting. Mr. Jones was elected chair, and they've set a meeting schedule. He said the next school committee meeting is January 30, 2014 and there is a school community forum scheduled for next Tuesday, the 28th at 6:30 at the school. Stu asked if someone was taking charge of arranging for posting the meeting notices. There was a brief discussion as well as a discussion about website space.

Prepaid Taxes – Stu reported there are taxpayers who already sent checks for the 2014/15 taxes and town meeting has yet to take place to authorize acceptance. He suggested the Selectmen approve an order allowing contingent acceptance and if town meeting should reject the annual question, the money be returned. . Jo moved to approve the proposed order. Gary 2nd. **Vote in favor was 5-0.**

Elections Ordinance – Stu said he had a clean copy of the updated Election Ordinance that passed at the special town meeting on January 9, 2014 for the Selectmen to sign. They did so.

Other

- Cynthia said the letter regarding the Gravel Task Force referred to the minutes of January 9th and reminded folks that the minutes are in draft form until approved by the affected body.
- Selectmen signed a card congratulating Jennifer Kovacs on her recertification as a Town Clerk by the Maine Town and City Clerks' Association.

- Carol Korty said she thought the Selectmen should have imposed fines on those gravel pits that did not receive their permits until after the previous permits had expired. Nate noted the Planning Board had quite a backlog and a brief discussion followed.

There being no further business, the meeting adjourned at 9:30 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen

Letter regarding Gravel Task Force

January 20, 2014

Dear members of the Lamoine Selectboard:

We write with major concerns and objections regarding your decision to establish a task force to amend Lamoine's Gravel Ordinance. For the following reasons, we respectfully request that you reconsider and reverse your decision.

1. A flawed process. *The minutes of your January 9 meeting indicate that the lawyers Peliggi and Bearor discussed the ordinance task force idea in a meeting of the two. In discussion you appeared to readily accept the focus for the ordinance task force to be "3 to 4 points of contention" proposed by Bearor, without discussion of Town issues to be considered. We question the wisdom of accepting such early influence of the lawyer who is suing the Town, but the minutes show further that you reached no clear conclusions as to the purpose, intent, and process of the task force. Indeed, there is no indication in the minutes of a formal vote to establish this task force. You made the decision so quickly that you gave no opportunity for the Planning Board or other audience members to offer opinions or for the general public to learn about and respond to the idea.*

Further, the idea of a task force undermines both the role and the diligent work of the Planning Board in proposing amendments to the Town's ordinances. The Planning Board has received the Town's approval in the past and has already presented you with amendments to the current Gravel Ordinance—amendments specifically addressing concerns of gravel pit owners.

2. A poorly considered composition of a task force. *At your meeting on January 9, you developed no clear definition of the task force membership (especially the process and criteria for selection of members), yet volunteers are being recruited and the appointment of members is scheduled for your meeting on January 23.*

You specifically discussed inviting gravel pit operators, and/or their representatives, who do not live in Lamoine—non-citizens of our town—to be members of the task force. The persons you have identified in the gravel industry have demonstrated an overweening self-interest in their responses and practices since the passing of the revised Gravel Ordinance. We strongly object to non-citizens of Lamoine being engaged in proposing and developing Town ordinances.

3. A motivation apparently misplaced. *If your intention is to find the sources of conflict and explore possible ways that the Town and the gravel pit owners can cooperate, then a new gravel ordinance is not the solution. A working group, facilitated by an independent, disinterested professional trained in conflict management, is a good alternative.*

Your discussions about how to resolve the conflicts between the large gravel companies and the Gravel Ordinance give the appearance that you are averse to defending the law of the Town in court. We genuinely sympathize with your weariness in fending off the lawyers' persistent intrusions into your process, and we urge you to take control by vigorously supporting and energetically defending and enforcing the laws of the Town, and to find the resources to carry out that responsibility.

Thank you for your consideration. We look forward to a reversal of your proposal for a gravel ordinance task force.

Sincerely,

Anne Curtis

Kathryn Gaianguet

Elizabeth Garrett

Bruce P. Gillett

John Jerabek

Carol Korty

Elizabeth McMillen

MaryAnn Orzel

Kathleen L. Rybarz

David R. Sanderson

Valerie Sprague

Catherine de Tuede – currently overseas

John Wuorinen

Susa Wuorinen

Note: All signers have given their approval of this letter by email or phone.

(Draft of proposed task force process)

Gravel Ordinance Task Force

Background

In March 2013 the Lamoine Town Meeting enacted a new Gravel Ordinance that regulates mining activity. It increased the allowable setbacks to 100-feet from abutting property lines, required more water monitoring (depth and quality), and transferred aspects of the site plan review ordinance. Though the ordinance passed, the town meeting recognized that some amendments to the ordinance would need to occur, though there was no specific area identified.

Within weeks of adoption, several gravel operators filed suit against the Town of Lamoine, claiming the new ordinance, among other things, took away significant land value. Meanwhile, the Planning Board has tackled three areas it identified as needing amendment and will present those to the Board of Selectmen for possible inclusion at the March 2014 town meeting.

In meetings between the Plaintiffs' attorney (Ed Bearor) and the town's attorney (Dan Pileggi), the idea of a task force to deal with the ordinance and identified areas of dispute was floated as a way to work toward a solution. The two attorneys identified key stakeholders that should be involved as the Planning Board, Conservation Commission, Selectmen, and gravel operators. It was suggested that the size of the task force be no larger than 9.

Issues – *There are 3 to 4 areas of the present Gravel Ordinance that are in contention:*

- 1. Setback from abutting property lines which previously was 50 feet (10-feet with abutter permission), and increased to 100-feet in the new ordinance, with a 50-foot grandfathered setback for 3-years.*
- 2. Monitoring wells which require one well for each 5 acres of excavation permitted. The previous ordinance required one well to monitor depth to groundwater and no water quality testing.*
- 3. The renewal process which has clarified that permits expire after 3 years and the application process does not differentiate between a new permit and a permit for an existing operation*
- 4. Setback from certain identified natural resources which is now 250-feet.*

There may be other issues that we are unaware of.

Goals – The task force will:

- *State what goals each member desires*
- *Initially identify all areas of contention within the current ordinance*
- *Discuss solutions that may resolve some or all of the contentious provisions of the ordinance*
- *Draft a document to present to the Board of Selectmen to consider placing before a special town meeting dedicated to work on the Lamoine Gravel Ordinance*

Process

1. *The Board of Selectmen shall appoint members to the task force, keeping in mind the representation goals mentioned above. Members ideally will not be an advocate for any particular ideology but will work toward the goals outlined above. The Selectmen shall determine whom to appoint and the size of the task force. Members do not need to be residents of the Town of Lamoine, nor will they be required to be administered an oath of office. The Selectmen through their Administrative Assistant will coordinate the date and time of the first meeting.*
2. *The task force will meet face to face at the Lamoine Town Hall in public and televised sessions. Members of the public are welcome to attend and observe. It shall be up to the chair with input from the task force members as to whether non task-force members will be able to speak during meetings. A 2-hour time limit to all meetings shall be imposed.*
3. *A Selectman will chair the task force and lead the discussion. The task force shall choose scribe/secretary who will keep meeting notes and arrange for drafting of the presentation document and other paperwork as necessary.*
4. *The chair shall coordinate through the Administrative Assistant to the Board of Selectmen dates and times for subsequent meetings. Communication of most documents, agendas, etc. shall be made via e-mail coordinated through the town office. All documents shall be considered public documents unless specifically deemed confidential by the Maine Freedom of Access Act.*
5. *Drafted document language shall be distributed to all task force members via e-mail sent by the Lamoine Town Office prior to the scheduled meetings. The task force may call upon the resources of the Lamoine Town Office for assistance with drafting and distribution as needed. The Administrative Assistant to the Selectmen will be tasked as the liaison for such activity.*
6. *The task force may consult with recognized experts during the process, subject to approval by the Board of Selectmen prior to engaging such experts – this is necessary to minimize costs to all parties.*
7. *The final document to be transmitted to the Board of Selectmen shall be approved by a majority of the task force. If there is not unanimous approval, those in the minority shall, in writing, explain the reasons for opposition to the final document.*
8. *The task force recognizes that the Board of Selectmen has the final authority on deciding whether any proposed amendments will be offered to the voters of the Town of Lamoine for adoption and determining the method for calling a town meeting.*

Schedule

- *January 23, 2013 – Appointments to task force made, initial meeting scheduled*
- *February 2013 – Initial meeting to state goals, review process*
- *February or March, 2013 – Working meetings to draft final document*
- *April 2013 – Final draft to the Board of Selectmen for consideration to place before town meeting.*
- *June 2013 – Possible special town meeting to consider amendments.*

Letter from Lamoine Planning Board

January 16, 2014

To: Lamoine Board of Selectmen

From: Lamoine Planning Board

In Re: Recommended revisions to the Lamoine Gravel Ordinance

Dear Jo, Bernie, Cynthia, Gary, and Nate:

We, as a Board, find it difficult to understand the Select Board's failure to respond to our unanimously adopted revisions to the Gravel Ordinance, forwarded to you on September 17 and November 12, 2013. We write to you now to ask that you consider these recommendations in a public meeting and clearly state to the Planning Board your intentions regarding them.

The three revisions emerged from discussions we started soon after last year's Town Meeting. Over six months, we worked to develop language that would receive the full support of the Planning Board and reach the following goals:

1. remove inconsistencies and clarify the appeals process(Section 7G);
2. make it permissible for existing operators to extract sand and gravel within the new 100' buffer zone (to the old 50' setback) with the stipulation that any such extraction would be followed immediately by restoration (Section 8A);
3. clarify and simplify the depositing of funds in Gravel Pit Restoration accounts to ensure that funds will exist for restoration regardless of changes of ownership, financial distress of an operator, etc. (Section 8D).

We have attached the text of these three amendments. The motions passed without a negative vote by the Planning Board read: "to recommend [these] revisions to the Board of Selectmen for adoption by the Town Meeting".

We have received no indication that the Select Board has received these recommendations and no information regarding your questions about them or plans to present them at the next March Town Meeting. We respectfully await your response to this memorandum.

Gordon Donaldson, Secretary

ROY, BEARDSLEY, WILLIAMS & GRANGER, LLC
Attorneys and Counselors-At-Law
6 Water Street
P.O. Box 723
Ellsworth, ME 04605-0723

Peter R. Roy
Anthony W. Beardsley
Raymond L. Williams
Robert C. Granger
Daniel A. Pileggi
Eric N. Columer
Alison M. King

207-667-7121
207-667-7122
FAX 207-667-5513
www.rbwglaw.com

January 16, 2014

Selectpersons, Town of Lamoine
606 Douglas Highway
Lamoine, ME 04605

RE: Lamoine Building and Land Use Ordinance of March 16, 2011

To the Selectpersons:

I have been forwarded by the Selectboard an Article to be placed on the town meeting warrant by petition. This Article involves the land use ordinance.

I understand that the Selectboard would like my input on the legality and procedure it should follow regarding this Petition.

Title 30-A M.R.S.A. §2522 states: "On a written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall

either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.”

Before making the decision to place this Article on the warrant for a special or annual meeting, the petition should be reviewed to verify that a sufficient number of registered voters have signed the petition. I understand that the Annual Meeting is in March and the warrant has yet to be posted.

The proposed Article given to me to review has two areas which are problems which create ambiguity and may make that portion of the ordinance unenforceable:

1. I would direct you to Title 30-A M.R.S.A. §3002 which concerns the attestation and posting of ordinances and other issues relating to ordinances. Paragraph 3 of that Statute gives instruction on how the subject matter of the proposed ordinance should be reduced to the question placed on the warrant. It suggests “shall an ordinance entitled _____ be enacted”. This citizen’s petition does not pose the proposed Article as a question. Revisions must follow the same procedure as ordinances. T 30-A M.R.S.A. §3004(4). See attached copy of Statute.

January 16, 2014

Selectpersons, Town of Lamoine

RE: Lamoine Building and Land Use Ordinance of March 16, 2011

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2. The proposed petition seeks to change Section 1. General Requirements Subsection H of the Lamoine Building and Land Use Ordinance of March 16, 2011. I find no part of Section 1 dealing with General Requirements nor do I find a Subsection H under either Section 3 General Requirements or under Section 1, Scope. I find this to be confusing, ambiguous, and possible a mistake. If Section 1 is amended as proposed, that part of the ordinance would be very difficult to enforce.

Also, a vote on an ordinance must be accepted, as is, or rejected. It cannot be amended from the floor. The voters should understand that they couldn’t, for instance, approve number 16 and disapprove number 27. This is not clear in the petitioners’ explanation.

Because of the requirements which need correction and which are ambiguous, as mentioned above, I advise that the Selectboard notify the petitioners that portions of their article are ambiguous or incorrectly worded or numbered. They

can redraft the Article and commence the process again or take the risk that the ambiguous Article may not be valid if adopted. I do not find that the intent of the proposed citizen's petition is illegal. If they choose to go forward, I advise the Selectboard to put the citizens' petition on the warrant for the annual town meeting as worded.

Enclosed are copies of the Statutes cited. Also, reference is made to the Maine Municipal Association's Manual, Executive Functions Section. There are a few paragraphs relating to the petition method of putting Articles on the warrant.

If a majority of the Selectboard do not like or want this Article, the board could put its own competing Article in the warrant which is not ambiguous.

Sincerely,

/s/ Anthony W. Beardsley

Anthony W. Beardsley, Esq.
AWB/kb